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Th14b

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COASTAL DEVELOPMENT PERMIT APPLICATION

Application number..... 3-97-027, Hooper/Filizetti Revetment

Applicants..... Christine Hooper and Gary Filizetti

Project location..... Seaward end of 23rd Avenue on the beach bluffs (at Santa Maria Cliffs Beach fronting Corcoran Lagoon) in the Live Oak area of Santa Cruz County (APNs 028-231-01 and 23rd Avenue road right-of-way parcel).

Project description Recognize after-the-fact the extension of a rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff Drive. Work took place primarily in February 1997, and involved approximately 500 cubic yards (or roughly 1,200 tons) of large rock placed against the bluff and excavated into the bedrock on and under the sandy beach.

Local approval Santa Cruz County approval with conditions (August 6, 1999); County action appealed to Commission (A-3-SCO-99-056).

File documents Santa Cruz County Certified Local Coastal Program (LCP), including Land Use Plan (LUP) and Zoning (IP); Santa Cruz County Coastal Development Permit File 97-0076; Coastal Development Permit Appeal Number A-3-SCO-99-056; California Coastal Commission Regional Cumulative Assessment Project (ReCAP) Database.

Staff recommendation.. Denial

Summary of staff recommendation: The proposed revetment extension is designed to protect an existing revetment – not the residence involved here. Commission staff, including the Commission’s Senior Civil Engineer and Senior Geologist have reviewed the geotechnical analysis provided by the Applicants in support of the proposed project and have determined that neither the existing blufftop residence nor the existing permitted revetment at the site are: (1) in danger from erosion as required by the Coastal Act; or (2) significantly threatened as required by the LCP to allow for shoreline armoring. Even if such a case were clearly established (which it is not here), it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such a threatened existing structure. Even if it could then be demonstrated that the proposed revetment were the least environmentally damaging feasible solution (which it is not here), the impacts on public access and visual resources, and potentially on ESHA temporally, are considerable. **Staff is recommending denial.**



California Coastal Commission
June 2000 Meeting in Santa Barbara

Staff: D.Carl Approved by:
3-97-027 Filizetti-Hooper rip-rap stfrpt.doc

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 2

Staff Report Contents

1. Staff Report Summary	3
2. Coastal Development Permit Jurisdiction Note	6
3. Staff Recommendation on Coastal Development Permit	7
Recommended Findings and Declarations	7
4. Project Description & Background	7
4.1 Regional Setting	7
4.2 Live Oak Area	8
4.3 Project Location	9
4.4 Project Description	9
4.5 Unpermitted Development	10
5. Coastal Development Permit Determination	12
5.1 Geologic Conditions and Hazards	12
5.1.1 Applicable Coastal Act Policies	12
5.1.2 Parallel LCP Policies	12
5.1.3 Coastal Act Section 30235 “Tests”	16
5.1.4 Defining the Existing Structure	17
5.1.5 Defining the Danger from Erosion to the Existing Structure	19
5.1.6 Feasible Protection Alternatives to a Shoreline Structure	21
5.1.7 Sand Supply Impacts	22
5.1.8 Geologic Conditions and Hazards Conclusion	25
5.2 Public Access and Recreation	26
5.2.1 Applicable Coastal Act Policies	26
5.2.2 Parallel LCP Policies	26
5.2.3 Property Ownership Issues – 23 rd Avenue	28
5.2.3 Coastal Priority Site – Beach Parcel	31
5.2.4 Blocked Public Access – Existing Trail	32
5.2.5 Public Access – Sand Supply Impacts	34
5.2.6 Public Access and Recreation Conclusion	35
5.3 Visual Resources	36
5.3.1 Applicable Coastal Act Policies	36
5.3.2 Parallel LCP Policies	37
5.3.3 Visual Access Issues	37
5.4 Wetland and Other Environmentally Sensitive Habitats	39
5.4.1 Applicable Coastal Act Policies	39
5.4.2 Parallel LCP Policies	42
5.4.3 Wetland and Other ESHA Issues	42
5.4.4 Wetland and Other ESHA Conclusion	43
5.5 California Environmental Quality Act (CEQA)	43
6. Enforcement	44
7. Exhibits	
Exhibit A: Santa Cruz County Staff Report, Findings and Conditions	



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 3

Exhibit B: Commission-Adopted Substantial Issue Findings for Appeal Number A-3-SCO-99-056
Exhibit C: Project Location
Exhibit D: Property Ownership at the Site
Exhibit E: Annotated Project Site Plan
Exhibit F: Bluff Retreat at Site
Exhibit G: Applicant's Alternative Access Proposal
Exhibit H: Applicant Proposed Visual Mitigation/Habitat Restoration
Exhibit I: LCP ESHA Policies
Exhibit J: Corcoran Lagoon Pre- and Post-Revetment Installation
Exhibit K: Commission Staff CEQA Comments on Project
Exhibit L: Santa Cruz County Enforcement Agreement
Exhibit M: Correspondence Received Since 1/12/2000 Substantial Issue Hearing for A-3-SCO-99-056

1. Staff Report Summary

The Applicants propose to extend an existing bluff-fronting revetment along a coastal bluff in the Live Oak area of Santa Cruz County on and adjacent to Santa Maria Cliffs Beach and Corcoran Lagoon. The proposed 500 cubic yard (or roughly 1,200 ton) revetment extension is already in place, having been installed without benefit of a coastal development permit (CDP) in February 1997. As a result, this application is for after-the-fact recognition of this structure. The revetment is not intended to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site. In other words, the proposed revetment is designed to protect another revetment.

The proposed revetment extension project straddles the coastal permitting jurisdictional boundary between Santa Cruz County and the Coastal Commission. The portion of the project within the County's jurisdiction is the subject of Appeal Number A-3-SCO-99-056. The Commission previously took jurisdiction over the coastal permit under appeal A-3-SCO-99-056 (in January 2000) and is scheduled to hear this related matter at the June 2000 hearing (item number Th14c).

1.1 Shoreline Structures

The LCP and Coastal Act limit structural shoreline protection measures to protect "existing structures" at this location. The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection only for existing *principal* structures. The proposed revetment in this case has been designed to protect another revetment. The existing permitted revetment proposed for protection here is an accessory structure that does not constitute an "existing structure" for the Coastal Act shoreline armoring purposes. This is inconsistent with the LCP and the Coastal Act.

The Coastal Act limits construction of shoreline armoring to that required to protect existing structures "in danger from erosion." The LCP mirrors the Coastal Act in this regard and requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered. Commission staff, including the Commission's Senior Civil Engineer and Senior Geologist have reviewed the geotechnical analysis provided by the Applicants in support of the proposed project and have



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 4

determined that neither the existing blufftop residence nor the existing permitted revetment at the site are in danger from erosion as required by the Coastal Act to allow for shoreline armoring. The subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion. Likewise, even if the existing revetment could be considered an “existing structure” for which protection could be pursued (which it is not), there has been no measurable bluff retreat at the proposed extension location in over 70 years. Although wave runoff and creek flow during storm surge conditions can result in some oblique storm attack at the base of the bluff proposed for armoring, and although some scour is likely at the end of the existing permitted revetment, such conditions do not create a “danger from erosion” within the meaning of Coastal Act Section 30235. This is inconsistent with the LCP and the Coastal Act.

Even were an “existing structure” “in danger from erosion” (per the Coastal Act) or “significantly threatened” (per the LCP) at this location, the Coastal Act requires that shoreline armoring be *required* to protect the existing structure in danger from erosion. In other words, under the policies of the Coastal Act, the project must be the least environmentally damaging feasible alternative. The LCP likewise calls for a “thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure.” Moreover, the LCP only allows structural measures “if non-structural measures...are infeasible from an engineering standpoint or not economically viable.” In this case, the Commission’s Senior Civil Engineer has evaluated the project and determined that “relocation or partial removal” of the existing revetment proposed for protection is a reasonable engineering solution. In other words, maintenance of the tapered end of the existing revetment to ensure that it is operating as designed is a feasible solution, as is the “no project” alternative based on the lack of significant retreat or coastal erosional danger to existing structures at this location; these less damaging alternatives have not been pursued. This is inconsistent with the LCP and the Coastal Act.

The Coastal Act requires that shoreline structures be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Likewise, the LCP requires that “the protection structure must not...adversely affect shoreline processes and sand supply.” In this case, the approximately 1,300 square foot footprint of the proposed revetment extension within the Commission’s coastal permitting jurisdiction (extending beachward from the toe of the bluff) translates into a one-time direct sand supply impact due to physical encroachment of approximately 1,300 cubic yards. The proposed project has not been designed to eliminate this footprint sand supply impact, nor has this impact heretofore been quantified and mitigated through the County process. This is inconsistent with the LCP and the Coastal Act.

1.2 Public Access & Recreation

Multiple LCP and Coastal Act protect existing beach recreational areas, beach accessways, and blufftop recreational areas. The LCP also requires that any necessary shoreline protective structures “must not reduce or restrict public beach access.” The proposed revetment extension would be constructed partially on the 23rd Avenue road right-of-way and partially on a beach parcel designated as a “coastal priority site.” The LCP designates each of these areas for coastal recreational uses, facilities, and amenities. The State may have a public trust interest in the beach parcel. From available evidence, it appears that the public owns the road right-of-way. The beach parcel has heavily and consistently been used by the public



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 5

for a variety of recreational uses for at least the last 70 years. The 23rd Avenue right-of-way has also provided public access to the beach for many years. In both cases, if not already under public ownership, it would appear that the public may have established a prescriptive right of access for both the road and beach areas (although only a court of law can establish or extinguish prescriptive rights of access for this area).

The development of this site with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure in danger from erosion, that would unnecessarily degrade the adjacent beach recreational area, that would displace other LCP-described priority uses, that would block an existing publicly used meandering trail from 23rd Avenue to the beach (and replace this access with a 'trail' over the rip-rap), that would occupy approximately 1,300 square feet of heretofore beach recreational space, and that would reduce the supply of sand to recreational beach area is inconsistent with the LCP and the Coastal Act.

1.3 Visual Resources

The LCP and Coastal Act require protection of existing visual access at this location. The existing revetment (i.e., that rip-rap in place prior to the unauthorized placement of rock in February 1997), did not wrap fully around the bluff and was only minimally visible from the public vista along East Cliff Drive at this location. The proposed revetment, even with the County-required vegetation at its peak, would frame the existing ocean vista at this location with a pile of rock. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large revetment in front of the previously unadorned bluff. This would negatively redefine the scenic corridor, reframe the ocean vista at this location, and upset the general viewshed of the open beach at this location. The Applicant's alternative revegetation proposal could act to alleviate some visual concerns if the proposed project were otherwise approvable (which it is not). However, the less landform alteration and rip-rap boulders in the viewshed the better from a visual access perspective, even if such a mass can be camouflaged. These negative viewshed impacts are inconsistent with the LCP and Coastal Act.

1.4 ESHA

The LCP and Coastal Act recognize and protect the Corcoran Lagoon/Rodeo Creek system at this location as ESHA. The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. This area is an ESHA within which limited development activity is allowed. However, the subject rocks were not installed when the Lagoon waters were present. As of the staff report date, the Lagoon is not adjacent to the revetment, but rather sandy recreational beach abuts the subject rock. In any case, there are complementary Coastal Act policies at play here. Since the proposed revetment extension is not necessary to protect an existing threatened structure consistent with the Coastal Act, any potential ESHA impacts can be avoided.

1.5 Conclusion



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 6

In sum, there is not an existing structure in danger from erosion at this location. Even if such a case were clearly established (which it is not here), it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such a threatened existing structure. Even if it could then be demonstrated that the proposed revetment were the least environmentally damaging feasible solution (which it is not here), the impacts on public access and visual resources, and potentially on ESHA temporally, are considerable.

The project is inconsistent with the LCP and the Coastal Act, unnecessarily impacts coastal resources, and staff is recommending denial.

Finally, the proposed revetment extension was installed without benefit of a CDP and has been in place for over three years. The subject revetment's negative coastal resource impacts (i.e., on public access, on visual resources, on ESHA) have therefore been felt by the public for those 3 years. The Commission's denial of this project (i.e., denial of both the coastal permit that is the subject of appeal A-3-SCO-99-056 and the coastal permit that is the subject of application number 3-97-027) activates the clause in the County enforcement agreement (agreed to by Applicant Filizetti) that requires removal of the revetment and restoration of the site to its pre-unpermitted development condition within 30 days of this final Commission action (i.e., by July 15, 2000). To restore coastal resources at the site, and in the interest of the public, the subject revetment must be removed in its entirety, and the site restored to its pre-violation status, as soon as possible. Since removal and restoration constitute "development," any such activities will require CDPs; one for work on the beach (in the Commission's CDP permitting jurisdiction) and an appealable CDP for that portion in the County's CDP jurisdiction above the toe of the bluff. In any event, removal and restoration will be handled through separate enforcement action.

2. Coastal Development Permit Jurisdiction Note

The proposed project is located partially within the coastal permitting jurisdiction of Santa Cruz County, and partially within the Coastal Commission's coastal permitting jurisdiction. The jurisdictional boundary in this case is along the toe of the coastal bluff (see page 2 of Exhibit E for the approximate location of this boundary). Accordingly, this CDP application is only for that portion of the project extending onto the beach/lagoon area from the toe of the bluff. The remainder of the project is the subject of Appeal Number A-3-SCO-99-056. The Commission previously took jurisdiction over the coastal permit in the County's permit area under appeal A-3-SCO-99-056 (in January 2000; see Exhibit B for the adopted substantial issue findings) and is scheduled to hear this related matter in a de novo public hearing at the June 2000 Commission meeting (item number Th14c).

Although clearly it is not always feasible to arbitrarily distinguish impacts between jurisdictions that are created by the one rip-rap project, this staff report, unless otherwise indicated, discusses the CDP for the portion of the project in the Commission's coastal permitting jurisdiction. However, since the two portions of the project are inextricably linked, both staff reports (for application 3-97-027 and appeal A-3-SCO-99-056 should be consulted).



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 7

3. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

Motion. *I move that the Commission approve Coastal Development Permit Number 3-97-027 for the development proposed by the Applicants.*

Staff Recommendation of Denial. *Staff recommends a **no** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

Resolution To Deny The Permit. *The Commission hereby denies a coastal development permit for the proposed development on the grounds that the project will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

Recommended Findings and Declarations

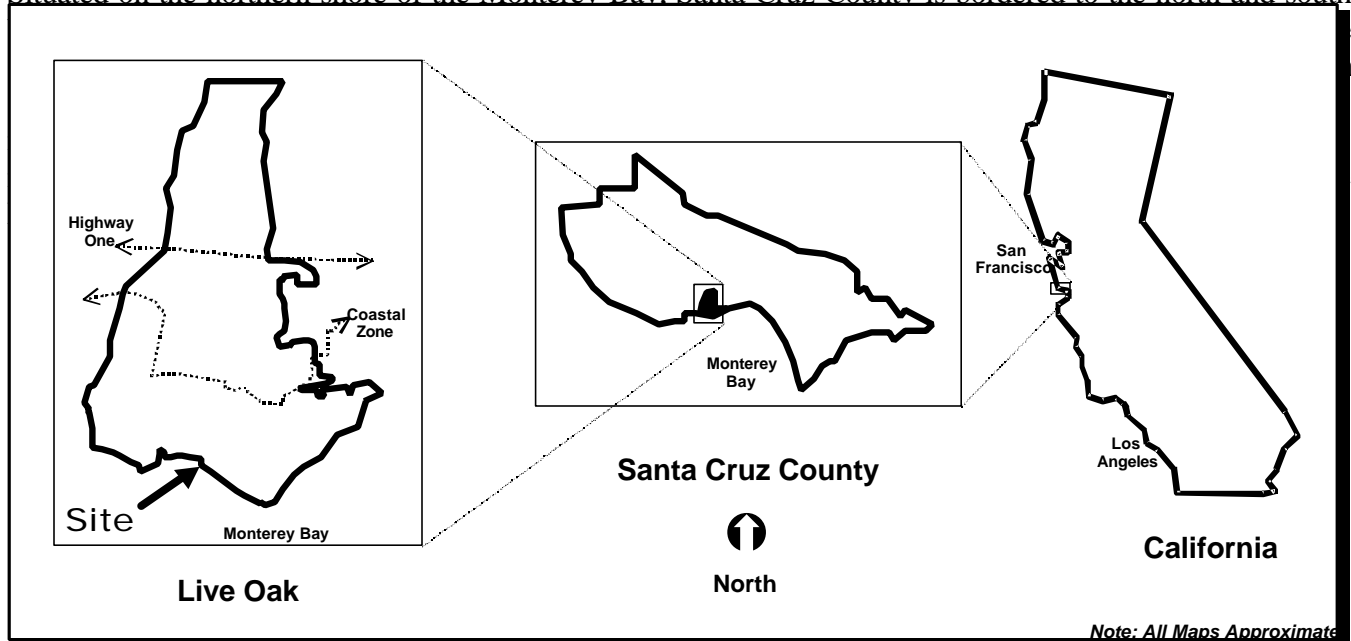
The Commission finds and declares as follows:

4. Project Description & Background

The proposed revetment is located on the beach and bluffs at Santa Maria Cliffs Beach fronting Corcoran Lagoon at the seaward end of 23rd Avenue in the unincorporated Live Oak area of Santa Cruz County.

4.1 Regional Setting

Situated on the northern shore of the Monterey Bay, Santa Cruz County is bordered to the north and south



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 8

Santa Cruz County's coastal setting, its mild climate, and multicultural identity combine to make the area a desirable place to both live and visit. As a result, Santa Cruz County has seen extensive development and regional growth over the years. In fact, Santa Cruz County's population has nearly doubled since 1970 alone with projections showing that the County will be home to over one-quarter of a million persons by the year 2000.¹ This growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services but also the need for parks and recreational areas. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, coastal recreational resources are seen as a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems such as that found in Live Oak. With Santa Cruz County beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in Live Oak.

Live Oak is part of a larger area including the Cities of Santa Cruz and Capitola that is home to some of the best recreational beaches in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including San Francisco and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

See Exhibit C for regional location maps.

4.2 Live Oak Area

Live Oak represents the unincorporated segment of Santa Cruz County located between the City of Santa Cruz and the City of Capitola. The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to the area. Walking, biking, skating, viewing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access complex.

¹ Census data from 1970 shows Santa Cruz County with 123,790 persons; by 1996, California Department of Finance estimated that this number had increased to 243,000 persons; Association of Monterey Bay Area Governments (AMBAG) projections show that the population is expected to increase to 259,905 by the year 2000.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 9

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially urbanized area with few major undeveloped parcels remaining. Development pressure, particularly for shoreline armoring, has been disproportionately intense for this section of Santa Cruz County.² In fact, much of the Live Oak coastline is armored in some way with rip-rap or seawalls, and the shoreline armoring extending from the Santa Cruz Harbor's east jetty through to the Capitola wharf covers a total area of approximately 4½ acres of sandy beach. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.).³ Given that the beaches are the largest public facility in Live Oak, this pressure will be particularly evident in the beach area.

See Exhibit C for Live Oak area maps.

4.3 Project Location

The proposed project is located on the bluffs and beach fronting the seaward end of 23rd Avenue. The beach at this location is known locally as Santa Maria Cliffs Beach or Corcoran Lagoon Beach. This broad beach extends from a narrow tidal shelf area adjacent to Sunny Cove (upcoast) through to the promontory at Applicant's residence above the beach. Corcoran Lagoon is present both inland (across East Cliff Drive) and temporally between East Cliff Drive and the ocean at this wide beach area below the Applicant's residence. Contrasting this wide sandy beach area at the Corcoran Lagoon inlet area, the beach setting changes quite drastically at this promontory and becomes extremely narrow all the way down to the westernmost outcroppings of rock at Soquel (aka Pleasure) Point (downcoast). This narrow beach is defined on its inland edge by rip-rap protecting residential structures along the blufftop and is most often referred to as 26th Avenue Beach. In fact, the Commission's ReCAP project estimates that almost one acre of the recreational beach area has been covered by revetments along the stretch of 26th Avenue Beach between Corcoran Lagoon and Moran Lake.⁴ See Exhibits C and D.

4.4 Project Description

The existing permitted rip-rap revetment below the Applicant's blufftop residence historically extended along the narrow 26th Avenue Beach frontage, slightly wrapping around the headland at 23rd Avenue and inland towards East Cliff Drive. This existing revetment was initially installed in some form prior to the Coastal Act and has been repaired and maintained several times since. The Applicants now propose to extend this existing revetment inland perpendicular to the ocean along the bluff. The County's action

² Although the Live Oak shoreline accounts for only about 7% of the Santa Cruz County coast, from 1983-1993 this shoreline accounted for over 20% of the coastal development projects immediately adjacent to the shoreline, and over 36% of the projects associated with shoreline armoring (source: California Coastal Commission Regional Cumulative Assessment Project (ReCAP) Database).

³ The LCP identifies Live Oak at buildout with a population of approximately 29,850 persons; based on the County's recreational formulas, this corresponds to a park acreage of 150-180 acres. Though Live Oak accounts for less than 1% of Santa Cruz County's total acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.

⁴ Approximately 1,700 linear feet of shoreline armoring were identified in this stretch as of 1993. Using 20 feet of sand beach coverage as the general width of these structures, this translates to approximately 34,000 square feet of beach now covered by rock. Shoreline armoring installed since 1993 will have increased this figure.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 10

describes this as a 60 linear foot extension; the County-approved site plan shows an approximately 65 foot extension. Commission staff field verification indicates that approximately 100 linear feet of new stones have been added. As indicated by the Applicant, this discrepancy (i.e., 65 feet versus 100 feet), can likely be attributed to a limited amount of new rock overlapping previously (pre-1997) existing rock. In any case, approximately 500 cubic yards (or roughly 1,200 tons) of rock is involved placed at a approximately 2:1 slope gradient with a 10 foot keyway excavated in the sandstone bedrock below the beach. It is particularly important to note that the revetment is not intended to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site.

The Applicant also proposes a pathway connecting from the existing blufftop foot trail both over the revetment to the forebeach, and along the bluff edge inland towards East Cliff Drive. The path over the revetment would be accomplished through positioning rip-rap; the inland path would be constructed along the inland edge of the bluff with a rock border along its beach edge.

See Exhibit E for proposed project plans.

4.5 Unpermitted Development

In February 1997, the proposed revetment extension was installed without benefit of a coastal development permit. An emergency permit had been issued by the County to repair the existing permitted revetment (County Emergency Permit 4914 E issued 2/7/97), but this emergency permit did not cover the proposed revetment extension. County Emergency Permit 4914 E was for approximately 225 tons of rock (or about 1/5 of that currently proposed) to maintain the *existing* revetment at the site. On February 24, 1997, Commission staff informed the Applicants that the constructed revetment extension was a violation of the Coastal Act's permitting requirements; County staff also informed the Applicants at this time that the work was not covered by County Emergency Permit 4914 E. Subsequently, on May 1, 1997 the Applicants were informed that all unpermitted rock was to be removed.



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 11



However, because the unpermitted rock was placed within Corcoran Lagoon, a wetland which may provide habitat for endangered species⁵, Commission staff and County staff in consultation with the California Department of Fish and Game (CDFG) determined that removal of the rock would need to be deferred until water levels in Corcoran Lagoon subsided to the extent that the rock could be removed without endangering these listed species. Ultimately, it was not until November 1997 that Lagoon conditions were conducive to removal of the rock. By this time, predictions of a major El Niño winter storm event were prevalent, and County and Commission staff allowed for a partial removal of the unpermitted rock with the remainder to stay in place until the County had taken an action on the Applicants' request for a revetment extension application (the subject appeal). At that time, a County decision on the unpermitted project seemed imminent and Commission staff determined it was prudent to let the County take its regulatory action prior to the Commission taking action.

Although Commission staff, County staff and the Applicants have had a series of meetings and discussions regarding resolution of the violation and the CDP applications during the course of 1998 and 1999, the County did not take an action on the proposed project application until August 6, 1999. As a result, the majority of the unpermitted rock has now been in place for over 3 years (i.e., since February 1997).

Consideration of the proposed revetment extension in this staff report is based solely upon the policies of

⁵ Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 12

Chapter 3 of the Coastal Act, as if the project had not yet been installed. However, please note that consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

5. Coastal Development Permit Determination

Because this proposed project straddles the coastal permitting jurisdictional boundary between the Commission and Santa Cruz County, and because the portion in the County's jurisdiction is the subject of Appeal Number A-3-SCO-99-056, parallel County LCP policies are included herein for reference in addition to Coastal Act policies. Note, however, that while the County LCP can provide guidance, the standard of review for this CDP determination is the Coastal Act.

5.1 Geologic Conditions and Hazards

5.1.1 Applicable Coastal Act Policies

Coastal Act Section 30235 addresses the use of shoreline protective devices:

***Section 30235.** Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. Section 30253 provides, in applicable part:

***Section 30253.** New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

5.1.2 Parallel LCP Policies

Please note that the Applicants have asserted that the applicable LCP geologic and shoreline armoring policies were incorrectly cited in the substantial issue determination staff report for the January 12, 2000 Commission hearing on Appeal Number A-3-SCO-99-056. The reason for the apparent discrepancy is that



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 13

the January A-3-SCO-99-056 staff report applied the LCP policies that were in effect at the time the Applicants submitted a filed application to the County; these are the same policies that were applied by the County in their review of the proposed project. Some of these geologic policies have since been amended by the County, and the amendments certified by the Commission pursuant to Santa Cruz County LCP Major amendment number 2-98. LCP amendment 2-98 was certified by the Commission with suggested modifications on February 3, 1999. Subsequently, the County took action to effectuate the Commission's suggested modifications. On July 14, 1999, the Commission determined that the County's action was legally adequate to conform to the Commission's certification with modifications of LCP amendment 2-98. The revised LCP policies took effect on July 15, 1999. The County acted on the proposed project approximately 3 weeks later on August 6, 1999.

In any case, the geologic policies applied by the County in their August 6, 1999 action and the geologic policies as currently amended are not substantially different and would not alter the basic conclusions in this case. Nonetheless, both sets of policies are analyzed in these findings. Where applicable, ~~struckthrough~~ text is used to show previous policy text removed and underline text is used to show text added by LCP Amendment # 2-98; footnotes are used for further clarification. Where applicable, "old" refers to policies in effect at the time the Applicants submitted a filed application to the County (the policies applied by the County in their review of the project) and "new" refers to policies effective as of July 15, 1999.

The LCP addresses shoreline protective structures primarily through LUP Policy 6.2.16 (Structural Shoreline Protection Measures), old IP Section 16.10.070(g)(5) (Coastal Bluffs and Beaches Permit Conditions), and new IP Section 16.10.070(h)(3) (Coastal Bluffs and Beaches, Shoreline Protection Structures).⁶

LUP Policy 6.2.16 Structural Shoreline Protection Measures.⁷ Limit structural shoreline protection measures to structures which protect existing structures from a significant threat, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal-dependent uses. Require any application for shoreline protective measures to include a thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure, protection of the upper bluff or area immediately adjacent to the threatened structure, and engineered shoreline protection such as beach nourishment, revetments, or vertical walls. Permit structural protection measures only if non-structural measures (e.g., building relocation or change in design) are infeasible from an engineering standpoint or not economically viable. The protection structure must not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, increase erosion on adjacent properties, or cause harmful impacts on wildlife and fish habitats or archeological or paleontological resources. The protection structure must be placed as close as possible to the development requiring protection and must be designed to minimize adverse impacts to recreation and to minimize visual intrusion.

⁶ "Old" IP Section 16.10.070(g)(5) policy language was inserted nearly verbatim into new IP Section 16.10.070(h)(3) pursuant to LCP Amendment Number 2-98 effective July 15, 1999.

⁷ Note only minor changes to LUP Policy 6.2.16 as effective July 15, 1999.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 14

Shoreline protection structures shall be designed to meet approved engineering standards for the site as determined through the environmental review process. ~~Structural protection measures should only be considered where a significant threat to an existing structure exists, or where seawalls have been constructed on adjoining parcels.~~ Detailed technical studies will shall be required to accurately define the oceanographic conditions affecting the site. All shoreline protective structures shall incorporate permanent survey monuments for future use in establishing a survey monument network along the coast for use in monitoring seaward encroachment or slumping of revetments and erosion trends. No approval shall be given for shoreline protective structures that do not include permanent monitoring and maintenance programs. Such programs shall include a report to the County every five years or less, as determined by a qualified professional, after construction of the structure, detailing the condition of the structure and listing any recommended maintenance work. Maintenance programs shall be recorded and shall allow for County removal or repair of a shoreline protective structure, at the owner's expense, if its condition creates a public nuisance or if necessary to protect public health and safety.

Old IP Section 16.10.070(g)(5).⁸ *Shoreline protection structures shall be limited to structures which protect existing residences and business or commercial structures, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal dependent uses. Structural protection measures shall be permitted only if non-structural measures (i.e. building relocation or change in design) are infeasible from an engineering or economic standpoint. Seawall construction shall be considered only where a significant threat to an existing structure exists, where seawalls have been constructed on adjoining parcels and where rip-rap would not adequately protect the structure. The protection structure shall be designed to meet adequate engineering standards based on the geologic hazards assessment or other detailed technical information. The protection structure shall not: (i) reduce or restrict public beach access; (ii) adversely affect shoreline processes and sand supply; (iii) increase erosion on adjacent properties; (iv) cause harmful impacts on wildlife and fish habitats; (v) be placed further than necessary from the development requiring protection; or (vi) create a significant visual intrusion.*

New IP Section 16.10.070(h)(3).⁹ *Shoreline protection structures shall be governed by the following:*

- (i) shoreline protection structures shall only be allowed on parcels where both adjacent parcels are already similarly protected, or where necessary to protect existing structures from a significant threat, or on vacant parcels which, through lack of protection threaten adjacent developed lots, or to protect public works, public beaches, and coastal dependent uses. Note: New shoreline protection structures shall not be*

⁸ Note that old IP Section 16.10.070(g)(5) policy language was inserted nearly verbatim into new IP Section 16.10.070(h)(3) effective July 15, 1999.

⁹ New IP Section 16.10.070(h)(3), effective July 15, 1999, includes much of the policy language of old IP Section 16.10.070(g)(5) and includes revised policy language to better conform to LUP Policy 6.2.16.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 15

allowed where the existing structure proposed for protection was granted an exemption pursuant to Section 16.10.070(h)2.

- (ii) seawalls, specifically, shall only be considered where there is a significant threat to an existing structure and both adjacent parcels are already similarly protected.*
- (iii) application for shoreline protective structures shall include a thorough analysis of all reasonable alternatives to such structures, including but not limited to relocation or partial removal of the threatened structure, protection of only the upper bluff or the area immediately adjacent to the threatened structure, beach nourishment, and vertical walls. Structural protection measures on the bluff and beach shall only be permitted where non-structural measures, such as building relocating the structure or changing the design, are infeasible from an engineering standpoint or not economically viable.*
- (iv) shoreline protection structures shall be placed as close as possible to the development or structure requiring protection.*
- (v) shoreline protection structures shall not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, increase erosion on adjacent property, create a significant visual intrusion, or cause harmful impacts to wildlife or fish habitat, archaeological or paleontologic resources. Shoreline protection structures shall minimize visual impact by employing materials that blend with the color of natural materials in the area.*
- (vi) all protection structures shall meet approved engineering standards as determined through environmental review.*
- (vii) all shoreline protection structures shall include a permanent, County approved, monitoring and maintenance program.*
- (viii) Applications for shoreline protection structures shall include a construction and staging plan that minimizes disturbance to the beach, specifies the access and staging areas, and includes a construction schedule that limits presence on the beach, as much as possible, to periods of low visitor demand. The plan for repair projects shall include recovery of rock and other material that has been dislodged onto the beach.*
- (ix) All other required local, state and federal permits shall be obtained.*

LUP Policy 6.2.18, in effect at the time the application was filed and as applied by the County in their action, specifically prohibited new structures in coastal hazard areas in most cases:

Old LUP Policy 6.2.18 Prohibit New Structures In Coastal Hazard Areas. ...Prohibit new structures, public facilities, and service transmission systems in coastal hazard areas unless they are necessary for existing residences or to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches or coastal dependent uses.

Current LUP Policy 6.2.18 (effective July 15, 1999) has a different intent and no longer includes the



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 16

structural prohibition as follows.

New LUP Policy 6.2.18 ~~Prohibit New Structures~~ Public Services In Coastal Hazard Areas.
Prohibit ~~new structures, public utility facilities, and service transmission systems in coastal hazard areas unless they are necessary for to serve existing residences or to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches or coastal dependent uses.~~

The major difference between the “old” versus the “new” LCP policies as it relates to the proposed project is that LUP Policy 6.2.18 no longer applies here. In most other ways, the new policies are generally more restrictive with regards to where and when shoreline protective structures are appropriate. These policies generally allow for shoreline protection “where necessary to protect existing structures from a significant threat.” Such structural protection is only allowable when non-structural measures are infeasible, and when such protection does not reduce public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, or negatively impact habitat. On the whole, these LCP policies recognize that structural shoreline protection measures have negative resource impacts and are to be utilized sparingly – and only when it can be demonstrated that such measures are warranted and appropriately mitigated.

5.1.3 Coastal Act Section 30235 “Tests”

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” solutions alter natural shoreline processes. Accordingly, with the exception of new coastal-dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing structures or public beaches in danger from erosion. The Coastal Act does not require the Commission to approve shoreline altering devices to protect vacant land or in connection with construction of new development. The Coastal Act provides these limitations because shoreline structures have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection only for existing *principal* structures. The Commission must always consider the specifics of each individual project, but has found that accessory structures (such as patios, decks, gazebos, stairways, etc.) are not required to be protected under Section 30235 or can be protected from erosion by relocation or other means that do not involve shoreline armoring. The Commission has historically permitted at grade structures within the geologic setback area recognizing they are expendable and capable of being removed rather than requiring a protective device that alters natural landforms along bluffs and cliffs.

Under Coastal Act Section 30235, a shoreline structure may be approved if: (1) there is an existing principal structure in danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply. The first and most important test of this policy is to determine



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 17

whether or not there is an existing principal structure in danger from erosion.

5.1.4 Defining the Existing Structure

For the purposes of shoreline protective structures, the Coastal Act distinguishes between coastal zone development which is allowed shoreline armoring, and that which is not. Under Coastal Act Section 30253, new blufftop development is to be designed, sited, and built to allow the natural process of erosion to occur without creating a need for a shoreline protective device. Coastal development permittees for new shorefront development thus are essentially making a commitment to the public (through the approved action of the Commission, and its local government counterparts) that, in return for building their project, the public will not lose public beach access, sand supply, visual resources, and natural landforms, and that the public will not be held responsible for any future stability problems. In other words, coastal zone development approved and constructed since the Coastal Act (and, by extension, since the LCP) has been in effect should not require shoreline protection in order to “assure stability and structural integrity.”

In contrast, coastal zone development approved and constructed prior to when the Coastal Act (and, by extension, prior to when the LCP) went into effect was not subject to Section 30253 requirements. Although any number of local hazard policies were in effect prior to the Coastal Act, these pre-Coastal Act structures have not necessarily been built in such a way as to avoid the future need for shoreline protection. Accordingly, Coastal Act Section 30235 allows for shoreline protection in certain circumstances for these “existing” structures.

In this case, the Applicants contend that the existing structure in need of shoreline protection is the existing ocean-fronting revetment. In other words, the proposed revetment would protect another revetment. However, the existing ocean-fronting revetment does not constitute an “existing structure” for the purposes of Section 30235. The revetment proposed to be protected is not a principal structure here, rather, the subject revetment is an accessory structure put in place for the sole purpose of protecting the principal residential use atop the coastal bluff.



California Coastal Commission

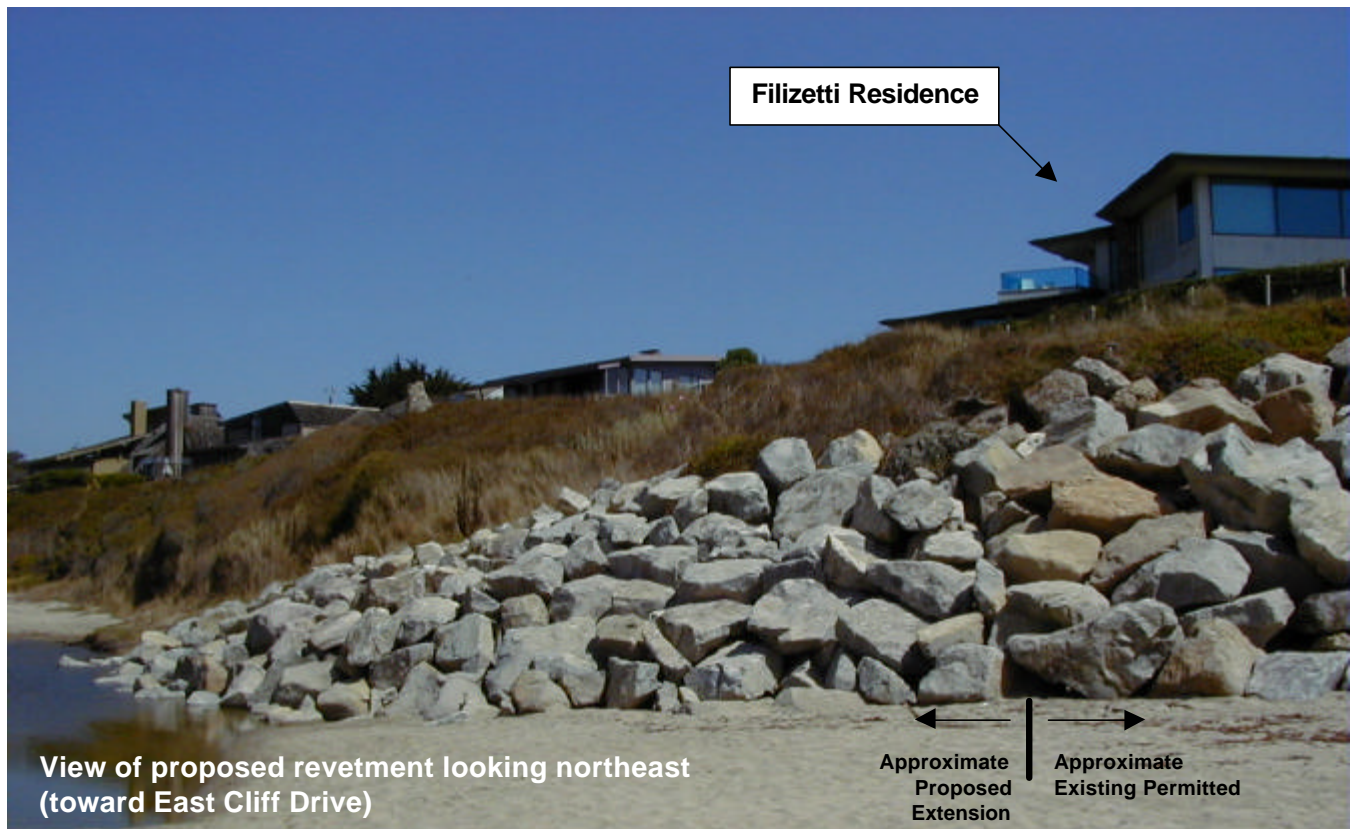
Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 18

The LCP provides some guidance in this area. For reference, “Accessory Structure” is defined in the County’s LCP as follows:

IP Section 13.10.700-S (“S” Definitions) Structure, Accessory. *A detached, subordinate structure, or a subordinate structure attached to a main structure by a breezeway, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or*



the main use of the land and which is located on the same site with the main structure or use.

Further distinguishing the existing revetment as an accessory structure in the LCP are the LUP and Zoning designations for the property in question. The LUP designation for the site is “Existing Parks and Recreation” and the beach and 23rd Avenue road right-of-way are zoned “Parks, Recreation and Open Space” (PR). Revetments are only allowed in the PR district as “accessory structures and uses.”¹⁰

¹⁰ In any case, these accessory structures and uses must be according to a Master Site Plan (per IP Section 13.10.355) for the site in question; there is no such plan in place here (IP Section 13.10.352). Moreover, any such allowable accessory structures are to be “subordinate and incidental to the main structure or main use of the land” pursuant to IP Section 13.10.611 (IP Section 13.10.352).



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 19

The LUP limits structural shoreline protection measures to the protection of existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses. The portion of this policy applicable here regards “existing structures” as opposed to the other uses described. In this case, the revetment extension is not proposed to protect the blufftop residence, but rather is proposed to protect the existing revetment between the residence and the ocean at this site.

The “old” IP mirrors the LUP’s existing structure limitation but expands upon what constitutes an existing structure by defining such as “existing residences and business or commercial structures.” The existing revetment is not a residence, business or commercial structure and thus does not constitute a structure for the purposes of old IP Section 16.10.070(g)(5). New IP Section 16.10.070(h)(3), however, does not include the further definition of existing structure, instead describing only “existing structures” identical to LUP Policy 6.2.16.

There is little doubt that the existing permitted revetment constitutes a structure under the LCP’s definition of “structure”. However, old IP Section 16.10.070(g)(5) defines existing structures that may warrant shoreline armoring. If old IP Section 16.10.070(g)(5) is applied, as was in effect at the time of application and used by the County in its review of this project, a revetment is not in the list of structures for which armoring is allowed. If the less specific “existing structure” portion of new IP Section 16.10.070(h)(3) is used, a revetment is not excluded from the list of existing structures.

The only structure at this location that might qualify for shoreline protection under the Coastal Act and the LCP (were such protective measures otherwise deemed necessary and accompanied by appropriate mitigations) is the blufftop residence.¹¹ The existing revetment at the site is an accessory structure that does not constitute an “existing structure” for the purposes of LUP Policy 6.2.16, old IP Section 16.10.070(g)(5), and new IP Section 16.10.070(h)(3). To find otherwise is to find that a pile of rock on the beach is a principal structure for which shoreline protection can be pursued. Such a finding would imply that the remainder of the armored coastline in the State could likewise be protected with separate shoreline structures. The end result of such a line of reasoning would allow seawalls or revetments to be placed seaward of existing seawalls or revetments in order to protect these “existing structures.” What would likely follow would be proposals to backfill these new lines of shoreline defense to create additional private blufftop space at the expense of public recreational beach space. It is unclear how many iterations of such shoreline protective structures might ultimately be pursued at any location under such a policy interpretation.

5.1.5 Defining the Danger from Erosion to the Existing Structure

The Applicants have submitted 2 summary geotechnical reports for the proposed project since the County’s action (by Rogers Johnson and Associates dated 11/22/99 and 1/31/2000); these reports have

¹¹ There is some question as to the degree that the residential structure qualifies for shoreline armoring. From review of air photos, it appears that some form of structure was present at this approximate blufftop location prior to the Coastal Act. However, the subject residence was substantially improved (adding 3,754 square feet and a second story to a 2,786 square foot residence) through a 1994 County coastal permit, and again improved (adding 400 second story square feet) through a 1995 County coastal permit. The County’s LCP requires 100 years of site stability, implemented through appropriate setbacks, without reliance on future shoreline armoring, for such development.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 20

been reviewed by the Commission's Senior Civil Engineer and Senior Geologist, whose input is present in this staff report. The Applicants maintain that the *existing permitted revetment* (fronting the ocean-side bluff) is in danger because a combination of creek induced erosion and oblique surf attack may scour and undermine the end of the existing permitted structure to the point that the end portion might fail, ultimately threatening the blufftop residence. However, even if the existing revetment could be considered a "structure" allowed shoreline protection (which it is not as described above), it is not clear from the geologic evidence that the existing structure is "in danger from erosion" nor that there is a "significant threat" to this revetment structure.

To conclusively show that an existing structure is in danger from erosion, there must be an imminent threat to such structures. While each case is evaluated based upon its own merits, the Commission has generally interpreted "imminent" to mean that a structure would be imperiled in the next two or three storm cycles (generally, the next few years).

It is clear that Corcoran Lagoon and Rodeo Creek do meander adjacent to the subject coastal bluff at times. During storm surge conditions, wave runup and creek flow would result in some oblique storm attack at the base of the bluff proposed for armoring. However, although some amount of scouring and erosion is likely, it is not clear that such conditions have resulted in a significant threat to the existing revetment. In fact, the Applicant's consulting geologist has indicated that the bluff has changed little at this location in over 70 years: "the loss of the aforementioned promontory [the most seaward extension of the bluff at this locality that eroded away in the 1983 storms] is the only measurable retreat observed since the first aerial photographs [dating from 1928]" (Rogers Johnson, 11/22/99 and 1/31/2000 reports). In other words, there has been only one erosional event in the past 70 years, and no measurable retreat at this location since 1983. Moreover, according to the Applicant's consulting geologist, the 1983 erosion event took place in an area now currently covered by the existing permitted revetment – **no** measurable erosion has taken place in the area proposed for the revetment extension (Rogers Johnson, 11/22/99 report, Plate 1 and 1/31/2000 report, Figure 2 (identical figures); see Exhibit F). This is consistent with observations made by Commission staff over the past 25 years.

The LCP provides some guidance in this area. The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered. Moreover, old LUP Policy 6.2.18 prohibits new structures in coastal hazard areas (such as the subject site) "unless they are necessary for existing residences."¹² In this case, the subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion (see Page 2 of Exhibit E). As stated by the Applicant's consulting geologist at the time the revetment was installed in 1997, "the [bluff erosion] to date does not threaten the Filizetti residence" (Rogers Johnson, 1/30/97 letter report). Because the existing residence at this location is not threatened without installation of the proposed revetment, the project is inconsistent with LUP Policy 6.2.16 and old LUP Policy 6.2.18, and with old IP Section 16.10.070(g)(5) and new IP Section 16.10.070(h)(3).

¹² Old Policy 6.2.18 likewise allows new structures in coastal hazard areas if necessary "to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches, or coastal dependent uses." However, these other specifications do not apply to this project.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 21

Accordingly, neither the residence nor the existing revetment at this location are in danger from erosion within the meaning of Coastal Act Section 30235. Further, there is not a “significant threat,” as required by the LCP, to either the residence or the existing revetment at this location. Lacking a demonstrable danger from erosion, the proposed revetment extension is unnecessary and is inconsistent with LUP Policy 6.2.16, old LUP Policy 6.2.18, old IP Section 16.10.070(g)(5), and new IP Section 16.10.070(h)(3).

The Commission finds, therefore, that this proposed project fails the first test of Section 30235 of the Coastal Act. As such, the Commission is not required to approve the proposed revetment extension. Moreover, in light of the proposed revetment extension’s negative impacts on coastal resources (see remainder of findings below), and the range of feasible less environmentally damaging alternatives available here (see next finding), the proposed revetment is not consistent with the certified LCP and the applicable Coastal Act policies and is denied.

5.1.6 Feasible Protection Alternatives to a Shoreline Structure

If the first test of Section 30235 had been met (which it has not, as seen in the finding above), the second test of Section 30235 of the Coastal Act that must be met is that the proposal to alter the shoreline (with the placement of the proposed revetment extension) must be *required* to protect the existing structure in danger from erosion. In other words, under the policies of the Coastal Act, the project must be the least environmentally damaging feasible alternative. Section 21080.5(d)(2)(A) of CEQA likewise prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Any action the Coastal Commission may be required to take to protect an existing structure at this location must be consistent with this section of CEQA as well as the Coastal Act. Other alternatives typically considered include: the “no project” alternative; abandonment of threatened structures; relocation of the threatened structures; sand replenishment program; and other repair and/or maintenance projects.

The LCP mimics this requirement. Even if it were to have been demonstrated that an existing structure for which protective measures were allowed was significantly threatened at this location, the LCP requires a “thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure” (LUP Policy 6.2.16 and new IP Section 16.10.070(h)(3)). Moreover, the LCP only allows revetments “if non-structural measures...are infeasible from an engineering standpoint or not economically viable” (LUP Policy 6.2.16; also old IP Section 16.10.070(g)(5) and new IP Section 16.10.070(h)(3)).

In this case, “relocation or partial removal” of the existing revetment is a reasonable engineering solution. In other words, as the bluff retreats on the inland bluff side of the subject area, the tapered end portion of the existing revetment subject to additional scour from the backside (i.e., the northernmost terminus of the existing revetment) could be recontoured so that the revetment continues to front the ocean-side bluff and protect the blufftop residence as it was originally designed to do. Such maintenance of existing revetments to ensure that they are operating correctly is more reasonable from a policy standpoint than would be a revetment to protect a revetment. The Commission’s Senior Civil Engineer indicates that such an option is indeed feasible at this location.



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 22

In addition, other soft approaches may be feasible in this case. The Applicant's consulting geologist concluded in 1997 that although not as effective as rip-rap if there is an "intense, prolonged rainy season," "softer approaches such as revegetation and drainage control may alleviate the problem" (Rogers Johnson, 5/27/97 letter report). In his January 31, 2000 report, the Applicant's consulting geologist indicates now, however, that such "nonstructural alternatives would be insufficient" because "the bluff is currently covered by thick vegetation which has done little to slow the erosion." This is notwithstanding the fact that there has been no documentation of any historical retreat in this vegetated area where the revetment extension is proposed after-the-fact.

The "no project" alternative likewise appears feasible in this case since the Applicant's consulting geologist has indicated that there has been no measurable erosion since 1983 and that the existing residence is not threatened at this time. In the evaluation of the no project alternative, the consulting geologist indicates that "if the slope proposed for protection is unprotected, it will gradually be eroded at its base, causing time-lagged slope failures that will eventually affect the Filizetti property" (Rogers Johnson, 5/27/97 letter report). As corroborated more recently in his January 31, 2000 report, the Applicant's consulting geologist concludes that if the proposed revetment extension were removed, "it would threaten the permitted revetment and, **eventually**, the existing house" (emphasis added). Over time, most all unprotected coastal bluffs will erode – this is what bluffs do naturally. The fact that such erosion over time may "eventually affect the Filizetti property" is not sufficient to dismiss the "no project" alternative. Moreover, according to representation made throughout the County process and as detailed in the Applicant's geotechnical reports, it is the existing revetment that is being protected, and not the residence.

There are several alternatives to the subject revetment extension that are feasible in this case and which would not involve the substantial negative impacts to coastal resources that would be expected from the proposed project (as described in the findings below). The most LCP and Coastal Act-consistent solution would be maintenance of the existing revetments to restack and recontour the end of the wall where it is subject to flanking and creek/lagoon erosion. The Commission's Senior Civil Engineer has concluded that this is indeed a feasible engineering solution at this location. Accordingly, the proposed revetment extension is unnecessary and is inconsistent with LUP Policy 6.2.16, old LUP Policy 6.2.18, old IP Section 16.10.070(g)(5), and new IP Section 16.10.070(h)(3).

The Commission finds, therefore, that this proposed project fails the second test of Section 30235 of the Coastal Act and it is not approvable under CEQA. Moreover, in light of the proposed revetment extension's negative impacts on coastal resources (see remainder of findings below), the proposed revetment is not consistent with the certified LCP and the applicable Coastal Act policies and is denied.

5.1.7 Sand Supply Impacts

The third test of Section 30235 (as previously cited) that must be met in order to allow Commission approval is that shoreline structures must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Likewise, the LCP requires that "the protection structure must not...adversely affect shoreline processes and sand supply" (LUP Policy 6.2.16; also old IP Section 16.10.070(g)(5) and new IP Section 16.10.070(h)(3)).



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 23

The Commission's experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. The natural shoreline processes referenced in Section 30235, such as the formation and retention of sandy beaches, can be significantly altered by construction of protective structures, since bluff retreat is one of several ways that beach quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off, and natural bluff deterioration. Shoreline armoring directly impedes these natural processes.

Beach material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs, becoming beach material when the bluffs or dunes lose material due to wave attack, landslides, surface erosion, gulying, et cetera. Coastal dunes are almost entirely beach sand, and wind and wave action often provide an on-going mix and exchange of material between beaches and dunes. Many coastal bluffs consist in whole or in part of marine terrace deposits – sediment formed on ancient shore platforms and beaches when the land was lower relative to the sea than it is today. Much of the material in the terraces is often beach quality sand or cobble, and a valuable contribution to the littoral system when it is added to the beach. Bluff erosion is a natural means by which this material is added to the beach. When the back beach or bluff is protected by a shoreline protective device, the natural contribution of material from the bluff to the beach will be interrupted and there will be a measurable loss of material to the beach.

Some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are temporary or difficult to distinguish from all the other actions which modify the shoreline. Such armoring also has distinct qualitative impacts to the character of the shoreline and visual quality. However, some of the effects that a structure may have on natural shoreline processes can be quantified, including:

- (1) The loss of the beach area on which the structure is located. Recreational sandy beach area that would be removed from use by such a revetment is in the Commission's coastal permitting jurisdiction and is the subject of this CDP application. And,
- (2) The long-term loss of beach which will result when the back beach location is fixed on an eroding shoreline. In this case, the proposed revetment would extend primarily inland along the bluff headland fronting 23rd Avenue. Because the proposed revetment would tie into an existing revetment fronting the subject residence on the ocean side of the property (originally installed pre-Coastal Act), it would not itself fix the back beach location at this site. The back beach was effectively "fixed" when the existing, permitted, pre-Coastal Act on-site revetment was installed years ago. And,
- (3) The amount of beach-quality material which would have been supplied to the beach if the back beach or bluff were to erode naturally. The bluff area that would be (is) covered here by the proposed revetment extension is within the County's permit jurisdiction. As such, the retention of sand generating materials by the proposed revetment is covered by related appeal number A-3-SCO-99-056 (also scheduled for the Commission's June 2000 meeting).



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 24

Thus, the sand supply impact applicable to the Commission's jurisdiction is limited to the recreational beach area covered by revetment extension.

The subject site is located within the Santa Cruz Littoral Cell. The Santa Cruz Cell is a high volume cell with annual longshore transport estimated between 300,000 and 500,000 cubic yards of beach quality materials annually. The dominant direction of longshore transport in this sand supply system is north north-west to south south-east; at the subject site, this translates roughly into a west to east distribution. Materials in this system have been estimated to come mainly from coastal streams (roughly 75%), with 20% coming from bluffs such as the subject site, and 5% coming from coastal ravines and sand dunes.¹³

The quantifiable loss of sand to the Santa Cruz Littoral Cell that would be due to the proposed revetment extension would be the volume of total material which would have gone into the sand supply system over the lifetime of the proposed shoreline protective device.

For the area in the County's jurisdiction, this volume of material would be the area between (a) the likely future bluff face location with shoreline protection; and (b) the likely future bluff location without shoreline protection. The Commission generally applies a sand supply calculation to determine this volume of material. In this case, however, the Applicant's consulting engineer has indicated that there has been no measurable erosion at the location of the proposed revetment in over 70 years (Rogers Johnson, 11/22/99 and 1/31/2000 reports). As such, the long-term bluff retreat rate at the proposed revetment location is essentially zero; the result is that the volume of beach-quality bluff material that would be retained due to the proposed revetment would also be essentially zero. In other words, since the bluff is not retreating at this location, a revetment would not result in a loss of beach-quality bluff material that would have been supplied to the Santa Cruz Littoral Cell sand supply system from the portion of the proposed project in the County's jurisdiction. More importantly, since the bluff is not retreating, the revetment extension is not necessary (as described above).

For the area within the Commission's coastal permitting jurisdiction (extending beachward from the toe of the bluff) the footprint of the revetment into the beach recreational space defines the sand supply impact. In other words, it occupies space on the beach. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used as beach. This generally results in a loss of public access (as discussed below) as well as a loss of sand. The area where the structure is placed will be altered from the time the protective device is constructed, and the extent or area occupied by the device will remain the same over time, until the structure is removed or moved from its initial location, or in the case of this revetment, as it spreads seaward over time. The beach area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint.

In this case, the proposed revetment extension occupies approximately 1,300 square feet extending from the bluff. The revetment extension has been keyed into the underlying Purisima bedrock at this location. In addition to access and recreational issues associated with the loss of useable beach space (discussed in later findings), this beach area will no longer be part of the local shoreline sand supply regime (both the

¹³ Adapted from the Coastal Commission's March 1994 ReCAP project report for the Monterey Bay titled: *Preliminary Report on Resource Status and Change*.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 25

beach sand and the underlying sandstone which would otherwise contribute to the local sand supply).

To convert the 1,300 square foot loss of beach per year into the volume of sand necessary to restore the beach commensurately in cubic yards, coastal engineers use a conversion value representing units of cubic yards per square foot of beach. This conversion value is based on the regional beach and nearshore profiles, and overall characteristics. When there is no regional data to better quantify this value, it is often assumed to be between 1 and 1.5 cubic yards, based on the assumption that to build a beach seaward one foot, there must be enough sand to provide a one-foot wedge of sand through the entire region of onshore-offshore transport. If the range of reversible sediment movement is from -30 feet msl to +10 feet msl, then a one-foot beach addition must be added for the full range from -30 to +10 feet, or 40 feet total. This 40-foot by 1 foot square parallelogram could be built with 1.5 cubic yards of sand (40 cubic feet divided by 27 cubic feet per cubic yard). If the range of reversible sediment transport is less than 40 feet, it will take less than 1.5 cubic yards of sand to rebuild one square foot of beach; if the range of reversible sediment transport is larger than 40 feet, it will take more than 1.5 cubic yards of sand to rebuild one square foot of beach.

In this case, the Commission has not been able to establish an actual conversion factor for the Santa Maria Cliffs/Corcoran Lagoon/26th Avenue Beach vicinity. However, if a 1.0 conversion factor is used (i.e., the low end of the spectrum of values typically assumed by coastal engineers), a conservative estimate of the cubic yard equivalent of 1,300 square feet per year can be calculated. For the subject site, this translates into a one-time direct sand supply impact due to physical encroachment of approximately 1,300 cubic yards. This proposed project has not been designed to eliminate this footprint sand supply impact, nor has this impact heretofore been quantified and mitigated through the County process.

The Commission finds, therefore, that this proposed project fails the third test of Section 30235, just as it failed the first two tests, and is wholly inconsistent with Section 30235 of the Coastal Act. Because the project is inconsistent with Coastal Act Section 30235, and in light of the proposed revetment extension's negative impacts on coastal resources (see remainder of findings below), the proposed revetment is not consistent with the certified LCP and the applicable Coastal Act policies and is denied.

5.1.8 Geologic Conditions and Hazards Conclusion

The existing revetment at the site does not constitute an existing structure for which shoreline armoring can be pursued under the LCP and the Coastal Act. Moreover, Commission staff, including the Commission's Senior Civil Engineer and Senior Geologist have reviewed the geotechnical analysis provided by the Applicants in support of the proposed project and have determined that neither the existing blufftop residence nor the existing permitted revetment at the site are significantly threatened (as required by the LCP) or in danger from erosion (as required by the Coastal Act) to allow for shoreline armoring. Furthermore, there are feasible alternatives for maintaining the existing revetment, including those that do not involve extending the revetment, that would allow this existing structure to continue to protect the blufftop residence as it was originally designed to do. The "no project" alternative is likewise feasible given the lack of significant retreat or coastal erosional danger to existing structures at this location. Therefore, the Commission finds that the proposed revetment request is unnecessary and inconsistent with Coastal Act Section 30235 discussed in this finding and is therefore denied.



California Coastal Commission

5.2 Public Access and Recreation

5.2.1 Applicable Coastal Act Policies

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

***Section 30210** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30213.** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....*

***Section 30214(a).** The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...*

***Section 30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***Section 30223.** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas. Section 30240(b) states:

***Section 30240(b).** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

5.2.2 Parallel LCP Policies

The LCP also protects existing public access and describes the need to obtain access easements. The LCP states:

***LUP Policy 7.7.10 Protecting Existing Beach Access.** Protect existing pedestrian...access to all beaches to which the public has a right of access, whether acquired by grant or through use,*



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 27

as established through judicial determination of prescriptive rights.... Protect such beach access through permit conditions such as easement dedication...

LUP Policy 7.6.3 Utilization of Existing Easements. *Seek to utilize existing publicly owned lands where possible to implement the trail system, subject to policy 7.6.2.*

LUP Policy 7.7.4 Maintaining Recreation Oriented Uses. *Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.*

LUP Policy 7.6.2 Trail Easements. *Obtain trail easements by private donation of land, by public purchase, or by dedication of easements...*

LUP Policy 7.7.11 Vertical Access. *Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If such impact will occur, the County will obtain as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: (b) Within the Urban Services Line: from the first public road to the shoreline if there is not dedicated access within 650 feet....*

LUP Policy 7.7.12 Lateral Access. *Determine whether new development would interfere with or otherwise adversely affect public lateral access along beaches. If such impact will occur, the County will obtain...dedication of lateral access along bluff tops where pedestrian and/or bicycle trails can be provided and where environmental and use conflict issues can be mitigated....*

IP Section 15.01.060(b) Trail and Beach Access Dedication. *As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or beach access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan.*

LCP access and recreation policies otherwise specifically applicable to the subject site include:

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. *Maintain a hierarchy of land use priorities within the Coastal Zone:*

First Priority: Agriculture and coastal-dependent industry

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. *Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.*



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 28

LUP Policy 2.23.2 Designation of Priority Sites. Reserve the sites listed in Figure 2-5 for coastal priority uses as indicated. Apply use designations, densities, development standards, access, and circulation standards as indicated.

LUP Policy 2.23.3 Master Plan Requirements for Priority Sites. Require a master plan for all priority sites, with an integrated design providing for full utilization of the site and a phasing program based on the availability of infrastructure and projected demand. Where priority use sites include more than one parcel, the master plan for any portion shall address the issues of site utilization, circulation, infrastructure improvements, and landscaping, design and use compatibility for the remainder of the designated priority use site. The Master Plan shall be reviewed as part of the development permit approval for the priority site.

LCP Figure 2-5 identifies the beach parcel at this location as one of the “Coastal Priority Sites – Live Oak” (APN 028-231-01). This parcel is subject to the following special development standards:

LUP Coastal Priority Site – APN 028-231-01

Designated Priority Use: “Existing Park, Recreation & Open Space”: Acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat.

Special Development Standards: Locate permanent public recreational support facilities, as feasible, above the area subject to coastal inundation.

Circulation and Public Access Requirements: Provide coastal access parking as feasible.

LUP Policy 7.7.1 Coastal Vistas. Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...

LUP Policy 7.7.18 Areas Designated for Neighborhood Public Access. Maintain a system of neighborhood access points appropriate for access by local residents at the following locations...23rd Avenue....

LUP Policy 7.7.19 Improvements at Neighborhood Access Points. Provide, encourage, and/or require provision of the following improvements appropriate to neighborhood access points: path improvements and maintenance; bicycle parking; recycling; garbage collection; and law enforcement...

5.2.3 Property Ownership Issues – 23rd Avenue

The proposed project would take place primarily on the open beach parcel (parcel number 028-231-01) and partially on the 23rd Avenue road right-of-way. Neither of the Applicants own the 23rd Avenue right-of-way property. Although Applicant Hooper has a fee title interest in the beach parcel, there is some question as to the ownership of the beach parcel as well (see findings below). Applicant Filizetti does not now own any of the land on which the proposed revetment would be placed; Mr. Filizetti’s residence is,



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 29

however, atop the coastal bluff and existing revetment at this location. See Exhibits D and E.

The 23rd Avenue road right-of-way extends from East Cliff Drive (inland of the site) through to the Monterey Bay. Historically, 23rd Avenue connected through to the former location of East Cliff Drive, which historically ran laterally between the row of houses (extending south of the site) and the ocean at this location. This beach-fronting segment of East Cliff Drive was long ago lost to coastal erosion and the roadway realigned inland. 23rd Avenue itself is currently a narrow street which provides paved access to four existing homes on the southeast side of the road. The pavement stops at the fourth home. The right-of-way, however, continues through to the ocean. Undeveloped bluff and beach areas are within this right-of-way area, as is a portion of the existing permitted revetment fronting the Filizetti residence. See Exhibit D.

The property ownership status of the 23rd Avenue right-of-way remains unresolved as of the date of this staff report. The County's findings do not discuss the ramifications of the property ownership of this road right-of-way. Parcel maps for this area are inconclusive. However, it is clear that the 23rd Avenue right-of-way is not shown as a separate parcel on parcel maps for the area (again, see Exhibit D). This is unlike other *private* roadways in the area such as 22nd Avenue (aka Coastview Drive) directly inland of the subject site which *is* a privately owned separate parcel on which taxes are paid. The implication is that the 23rd right-of-way, like other right-of-ways in the area, became public when it was offered to the County at the time of the original subdivision in the late 1800s. The County has since renamed this roadway (from Moran Drive to 23rd Avenue) and there has been a long history of public use as evidenced in part by the existing meandering trail to the beach at this location.

This right-of-way in the County's CDP jurisdiction is either: (1) public property; (2) private property where the public may have established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. The County has acknowledged that the *Applicants* do not own the right-of-way by conditioning their approval for the Applicant's to obtain a quit-claim to the property from the County (County Condition II.C, see Exhibit A). Even if it were conclusively shown that the right-of-way were not public, the public has used this area for many, many years as a beach access and blufftop viewing location and the Commission is unaware of any restrictions that have been placed over the years on this long public use. Although only a court of law can establish or extinguish prescriptive rights of access, it would appear that *if* the public does not already own the right-of-way, the public may have established a prescriptive right of access at this location. In any case, from the evidence identified to date, it appears that the public owns, or if not, may have established prescriptive access rights, on the 23rd Avenue road right-of-way.

The County conditioned their approval to require the Applicant to obtain an ownership interest in the right-of-way parcel through a "quit-claim" from the County. Establishing ownership in this way is backwards to basic permitting requirements for showing an ownership interest in the property for which development is proposed. In this case, the County would need to be a co-applicant as the right-of-way property in question appears to be owned by the public, as are the other County roadways in the vicinity. However, Commission staff filed application number 3-97-027 without evidence of 23rd Avenue ownership in order to bring both the related appeal (A-3-SCO-99-056) and this application before the Commission at the same time only because the staff recommendation was for denial of the subject proposal on the substantive geologic and access issues cited in these findings. Were the subject shoreline



California Coastal Commission

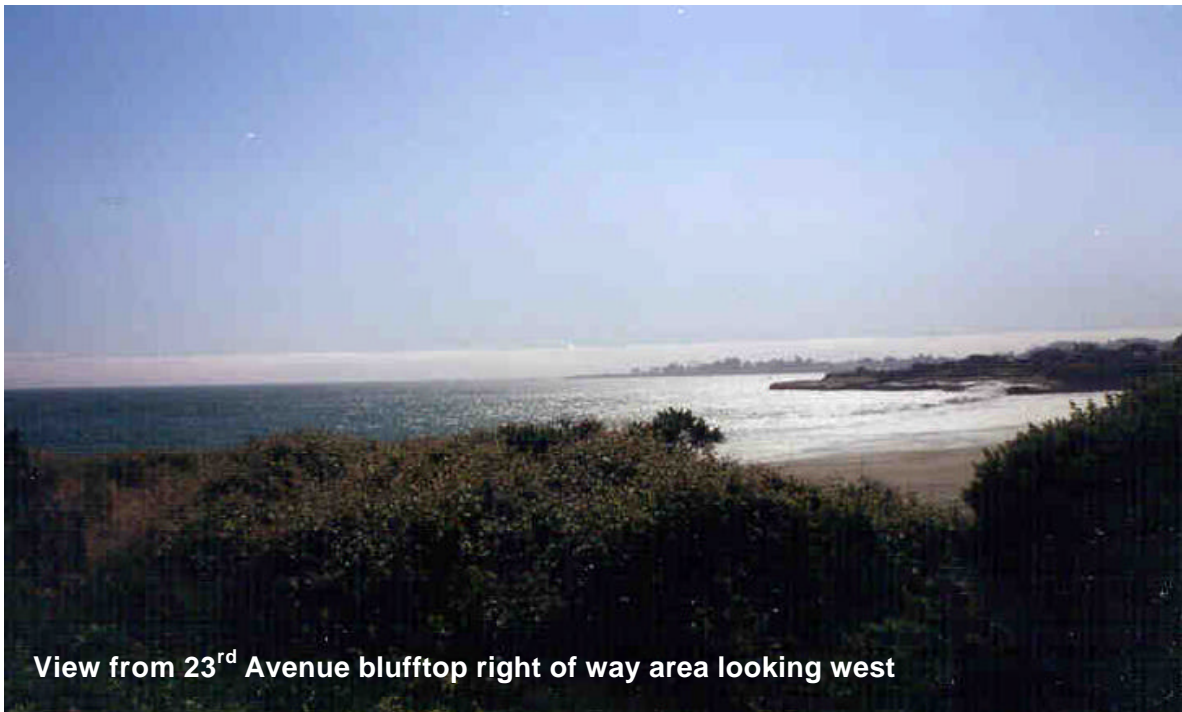
Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 30

protective device extension otherwise approvable here (which it is not), such ownership issues would need to be resolved in tandem with any such action.

In any case, the LCP provides relevant guidance for this site. Specifically, 23rd Avenue is designated in the LCP as a neighborhood accessway for which the development of pathways and public amenities is to be pursued (LUP Policies 7.7.18 and 7.7.19). LUP Policy dictates that such publicly owned lands be utilized where possible for pedestrian trails. Likewise, 23rd Avenue provides a stunning coastal vista to the northwest for which the LCP encourages the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches (LUP Policy 7.7.1).



This right-of-way is valuable coastal property for which the LCP dictates public uses. A “quit-claim,” as at least preliminarily agreed to by the County, could represent a gift of these lands to the Applicants. In urban recreational coastal areas such as Live Oak, where recreational amenities are in high demand, where land available for such amenities is limited, and where coastal land costs are exorbitant, such a potential gift of public lands is particularly troublesome in light of LCP and Coastal Act policies protecting public access at this location.

The development of such public lands with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), and that would displace other potential LCP-described priority uses of the right-of-way, is inconsistent with LCP Policies 2.22.1, 2.22.2, 7.7.1, 7.7.18, 7.7.19, new IP Section 16.10.070(h)(3)(v) and Coastal Act Policies 30210, 30211, 30213, 30221, 30223 which protect this 23rd Avenue right-of-way area for public recreational uses. In addition, such a revetment extension would unnecessarily degrade the adjacent beach recreational



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 31

area through the presence of an unnatural pile of rocks displacing recreational beach use. As such, the project is also inconsistent with Coastal Act Section 30240(b) protecting the adjacent beach areas from significant degradation.

5.2.3 Coastal Priority Site – Beach Parcel

The majority of the revetment extension would take place on the open beach parcel below the coastal bluff at this location. This beach parcel (parcel number 028-231-01) encompasses much of the sandy beach seaward of East Cliff Drive at this location, extending between the 23rd Avenue right-of-way and two beach parcels to the north and west (a County owned beach parcel to the northwest and another private parcel to the north on the seaward side of East Cliff Drive). A portion of parcel number 028-231-01 is within the County's coastal permit jurisdiction and a portion is within the Commission's jurisdiction.¹⁴ According to County assessor parcel data, the beach property is held in fee title by Applicant Hooper. However, the beach area in question was historically the mouth of Rodeo Creek and Corcoran Lagoon until East Cliff Drive artificially severed this connection sometime in the 1940s or thereabouts. As a result, California State Lands is currently reviewing whether or not the State has an ownership interest here. As of the date of this staff report, State Lands indicates that it is undetermined if there is clear title to the beach parcel and that it may be subject to a State sovereign claim. See Exhibit D.

Again, the LCP provides relevant guidance for this site. The LCP defines parcel number 028-231-01 as a "Coastal Priority Site" that is specifically reserved for "acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat" (LUP Policy 2.23.2 and LUP Figure 2-5). This site is designated "Existing Parks and Recreation" in the LUP and zoned "Parks, Recreation and Open Space" (PR). Pursuant to LUP Policy 2.23.3, a master plan (providing for full utilization of the site) is required for all priority sites. There is no master plan for this site, and the County did not process one as part of their local approvals. The County did not analyze any 'coastal priority site' issues.

Moreover, in addition to a potential State sovereign claim on the beach parcel, the coastal priority site may have other property ownership issues. First, it is clear that there has been longstanding public use of this beach parcel. The Commission is unaware of any restrictions that have been placed over the years on this long public use. Although only a court of law can establish or extinguish prescriptive rights of access for this property, it would appear that the public may have established a prescriptive right of access at this location. Second, the entire coastal priority site parcel is at times covered by Corcoran Lagoon and/or high tides and may be a public trust area. Parcel maps from the late 1800s show this area as the mouth of the Corcoran Lagoon estuarine system. This mouth of this system was later fragmented when East Cliff Drive was installed inland of the subject parcel. Notwithstanding the East Cliff Drive fill, air photo analysis indicates that Corcoran Lagoon has continually been present at this location.

Another property issue with the coastal priority beach site is that assessor parcel maps indicate a "beach easement" covers the seaward half of the parcel (the portion on which the revetment extension is

¹⁴ Again, the toe of the bluff at this location defines the CDP jurisdictional boundary. The parcel boundary, however, is not coterminous with the toe of the bluff. Parcel number 028-231-01 extends up the bluff to a point approximately 10 to 20 horizontal feet from the toe of the bluff.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 32

proposed). The County did not analyze, and there is no information that has been provided as of the date of this staff report which indicates to what degree this easement may affect development of the coastal priority site, if at all.

In any case, it is clear that the LCP has prioritized this site for coastal recreation uses and facilities. The footprint of the proposed revetment extends approximately 1,300 square feet into the beach recreational space. This portion of the beach would no longer be available for general beach-going activities. Both LCP and Coastal Act policies protect such existing beach access. It is inconceivable that a revetment would be allowed on this site absent a preponderance of evidence supporting protection of an existing structure consistent with LCP and Coastal Act policies. In this case, the evidence shows that such a revetment is not warranted (see previous geologic findings).

The development of the coastal priority site with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), that would displace other potential LCP-described priority uses of the site, and that would remove recreational beach area from use is inconsistent with LCP Policies 2.22.1, 2.22.2, 2.23.3, and Coastal Act Policies 30210, 30211, 30213, 30221, 30223 protecting this coastal priority site for public recreational uses. In addition, such a revetment extension would unnecessarily degrade the adjacent beach recreational area through the presence of an unnatural pile of rocks displacing recreational beach use inconsistent with Coastal Act Section 30240(b) which protects the adjacent beach areas from significant degradation. Furthermore, such development is inconsistent with LUP Policy 6.2.16, old IP Section 16.10.070(g)(5), and new IP Section 16.10.070(h)(3)(v) which protect against such disruption of beach access and its attendant adverse effect on recreational resources.

5.2.4 Blocked Public Access – Existing Trail

As identified in the County's local approval, the proposed revetment would block existing beach access historically available from East Cliff Drive through the 23rd Avenue right-of-way. This access crosses the paved portion of 23rd (extending four houses seaward of East Cliff Drive) and then becomes a meandering path that historically led down the bluff edge to the terminus of the existing permitted revetment. This pathway has been blocked by the unpermitted revetment at its beachmost terminus for over 3 years (i.e., since the revetment was installed without benefit of a coastal permit in February 1997). See Exhibit E for an approximate location of this trail.

The LCP and Coastal Act policies cited above protect this existing accessway and do not allow for development that would interfere with continued public use thereof (policies including, but not limited to, LUP Policy 7.7.10, and Coastal Act Sections 30210 and 30211). Moreover, the LCP requires that any necessary shoreline protective structures “must not reduce or restrict public beach access” (LUP 6.2.16, old IP Section 16.10.070(g)(5), and new IP Section 16.10.070(h)(3)). In light of these public access policies, the County required the reestablishment of the trail over the proposed revetment to the fore beach area “by means of a stairway (or alternative access acceptable to Planning Staff)” (County Condition II.A, see Exhibit A). The County likewise required an offer to dedicate (OTD) covering the reconfigured trail segment, and further requiring the Applicant to maintain the accessway (County Conditions II.E, IV.B, and V.F.1, see Exhibit A). It is these conditions that precipitated the Applicants related appeal of the project to



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 33

the Commission.¹⁵

The OTD that was required by the County was ambiguous on at least two points. First, County Condition II.E required the OTD for that portion of the site located “along the existing foot trail on the owner/applicant’s property.” The portion of the “existing” foot trail that is on the “owner/applicant’s” property is limited to that portion of the existing trail that has since been covered with unpermitted rock on the coastal priority site (parcel number 028-231-01). This is because neither of the Applicants own the 23rd Avenue road right-of-way. The County also required the Applicant to establish an ownership interest in the right-of-way as a condition of approval (County Condition II.C, see Exhibit A). However, it is not clear that the required ownership interest must pre-date the OTD. Second, County Condition V.F.1 describes an OTD with the same issues as County Condition II.E, but it includes recognition of a segment leading to the fore beach at the site. County Condition V.F.1 describes a different area than County Condition II.E. As such, the County-required OTD(s) is(are) unclear.

If, as Commission staff believe, the road right-of-way is owned by the County, these OTD flaws would not be fatal as the legal ability of the public to access the beach would be preserved (over a County roadway and then an access easement to the beach). If, however, the County were to quit-claim their ownership interest in the right-of-way, then a private parcel (i.e., the 23rd Avenue road right-of-way) would intervene between the first public road (East Cliff Drive) and the required OTD. In any case, existing public access is not preserved, as required by the Coastal Act and LCP, by such a legal instrument.

Notwithstanding the question of the effectiveness of the OTD as a legal instrument, were the revetment otherwise approvable (which it is not, as described in earlier geologic hazard findings), the reconfigured accessway shown on the Applicant’s plans would serve to recreate, and possibly improve, the existing pathway access from the 23rd Avenue blufftop to the beach at this location. This is because the accessway would include path segments which extended to both the fore and back beach (see Exhibit E). Such fore and back beach access is important at this location because Corcoran Lagoon oftentimes migrates adjacent to the bluff at this location serving to cut-off fore beach access. Two path segments would allow beach users to circumvent this obstacle. However, this part of the project is also not without issues.

First, the Applicant’s plans indicate a rip-rap border along the proposed backbeach path segment extending inland another 80 feet or so from the proposed end of the proposed revetment (see Exhibit E). These rip-rap boulders would raise the same issues of consistency with LCP and Coastal Act policies as would the proposed revetment. And second, the Applicant has indicated that a stepped stairway would be constructed within the proposed revetment extension to provide access to the forebeach. The County previously required the reestablishment of the trail to the fore beach area by stairway or equivalent (County Condition II.A, see Exhibit A).

Commission staff have not seen any engineering specifications of such a rip-rap stairway, but are concerned that such a stairway would be difficult, if not impossible, to adequately construct and maintain within a rip-rap revetment. In terms of construction, it would be difficult to position boulders in such a

¹⁵ Also appealed by Commissioners Wan and Nava for inconsistencies with the relevant LCP geologic, access, visual resource, and ESHA policies.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 34

way to mimic a stairway. In terms of maintenance, revetments are constantly in a state of oftentimes imperceptible movement (including subsidence, upsurge, and rock migration) and a stairway within such a structure is not likely to remain for any length of time (particularly during and after storm events affecting the existing ocean-fronting portion of the revetment) without constant maintenance. It is likely that such a stairway would require a concrete and steel foundation of some sort to be stable for any length of time. Such a stairway might need to be elevated above the revetment (e.g., on caissons or the like) to function at all. In fact, the Applicant previously provided an exhibit showing what such an accessway might eventually look like after construction were it to be constructed on piers (see Exhibit G, page 8).

In any case, if a revetment were otherwise demonstrated to be necessary here (which it is not as detailed in the above geologic findings), such pathway/stairway proposals would need better definition and more precise plans with which to analyze their consistency with the LCP and Coastal Act. Lacking such information, as in this case, it is difficult to determine whether or not such a reconfigured accessory would be adequate to protect public access at this site consistent with applicable LCP and Coastal Act policies.

5.2.5 Public Access – Sand Supply Impacts

As detailed earlier, the Commission's experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. Natural shoreline processes, such as the formation and retention of sandy beaches, can be significantly altered by construction of protective structures, since bluff retreat is one of several ways that beach quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. Shoreline armoring directly impedes these natural processes.

As detailed in the earlier geologic hazard finding, the sand supply impact within the Commission's jurisdiction involves the physical encroachment of the proposed revetment extension into the recreational beach space.¹⁶ This impact is twofold: (1) the extent it impacts the local shoreline sand supply process; and (2) the extent it reduces recreational beach area (as discussed in finding directly above). The local shoreline sand supply impact was previously discussed in the previous geologic findings wherein a one-time direct sand supply impact due to physical encroachment of approximately 1,300 cubic yards was detailed.¹⁷ To the extent that such sand supply impacts would reduce the useable recreational beach area at this location, this *sand supply* impact is also a public access impact.

The LCP and Coastal Act policies cited above protect this beach area so affected and do not allow for development which would interfere with continued public use thereof (policies including, but not limited to, LUP Policy 7.7.10, and Coastal Act Sections 30210 and 30211). Moreover, the LCP requires that any necessary shoreline protective structures "must not reduce or restrict public beach access" (LUP 6.2.16,

¹⁶ The other quantifiable sand supply impacts here are fixing the back beach and the retention of beach-generating bluff materials. The materials that would be retained by the proposed revetment extension are the subject of related appeal number A-3-SCO-99-056. The back beach was effectively "fixed" when the existing, permitted, pre-Coastal Act on-site revetment was installed years ago. See previous geologic findings.

¹⁷ See geologic findings.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 35

old IP Section 16.10.070(g)(5), and new IP Section 16.10.070(h)(3)).

5.2.6 Public Access and Recreation Conclusion

The proposed revetment extension would be constructed partially on the 23rd Avenue road right-of-way and partially on the “coastal priority site” beach parcel at this location. The LCP designates each of these areas (in different ways) for coastal recreational uses, facilities, and amenities. The development of the coastal priority site and the right-of-way with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), that would encroach upon recreational beach space, that would unnecessarily degrade the adjacent beach recreational area, and that would displace other potential LCP-described priority uses, is inconsistent with the LCP and Coastal Act policies cited in this finding.

Moreover, the proposed revetment would block an existing publicly used meandering trail along 23rd Avenue from East Cliff Drive (the first through public road) to the beach. Were the revetment to be otherwise approvable, the reconfigured trail alignment previously required by the County and offered by the Applicants would need to be better defined (both the legal instrument and the proposed physical trail improvements) in order to be found consistent with the Coastal Act and LCP access policies cited in this finding.

Because of these public access and recreation inconsistencies, and because the revetment is not otherwise approvable (as detailed in the previous geologic findings), the Commission denies the proposed revetment extension.

Finally, in the time since the County took action on the application, the Applicant has proposed an alternative accessway to mitigate for the loss of the pathway segment on 23rd Avenue (see Exhibit G). Under this alternative, the Applicant would reconstruct a boardwalk accessway within an existing County easement located to the north of the existing pathway at 23rd Avenue. This existing boardwalk was destroyed in the 1982-83 storms and never reconstructed by the County. This accessway is currently overgrown and only marginally useful at present because of variations in grade, holes in the path, Corcoran Lagoon overlap, et cetera. Also, the pathway generally ends before reaching the forebeach due to the typical water levels of Corcoran Lagoon in this area. See Exhibit G for photos of this accessway.

Such boardwalk accessway improvements as proposed by the Applicant would be welcome at this site, and could be used to mitigate some of the access impacts of the proposed revetment were it otherwise have been shown to be necessary and approvable (which it has not; see earlier geologic findings). However, if such off-site improvements were to be provided in-lieu of preserving existing access at 23rd, it would be difficult to find these trade-off consistent with LCP and Coastal Act policies protecting the existing accessway at 23rd. The County already has a public access easement in the existing boardwalk area. As described above, the property ownership situation at 23rd Avenue is ambiguous and would need to be clearly established before any such trade-offs could be evaluated against LCP and Coastal Act access policies. In general, if it is not possible to avoid impacts and mitigation is necessary, mitigation at the site of the impacts is the preferable method.



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 36

In any case, as described above, the Commission is denying the proposed revetment extension. As a result, the existing pathway from 23rd Avenue will not be blocked by the revetment in the future. Accordingly, there is no need for access mitigation for the proposed project.¹⁸

5.3 Visual Resources

5.3.1 Applicable Coastal Act Policies

The Coastal Act protects visual resources along the coast. Coastal Act Section 30251 states:

***Section 30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Visual access to and along the coast is also a form of public access. As such, Coastal Act access policies are also applicable to visual resources, as follows:

***Section 30210.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Finally, the Coastal Act describes minimization of landform alteration. Part 2 of Coastal Act Section 30253 states

***Section 30253(2).** New development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

¹⁸ While impacts from the proposed project will be avoided by denying the project, there remains an outstanding question of mitigating the access and recreational impacts associated with over 3 years of the revetment being in place without permits. See also Enforcement findings.



5.3.2 Parallel LCP Policies

The County's LCP is fiercely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. The LCP states:

LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

LUP Policy 5.10.6 Preserving Ocean Vistas. Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

LUP Policy 6.2.16 Structural Shoreline Protection Measures. ... The protection structure must ...be designed to minimize...visual intrusion. ...

Old IP Section 16.10.070(g)(5)(vi). Shoreline protection structures...shall not create a significant visual intrusion.

New IP Section 16.10.070(h)(3)(v). Shoreline protection structures shall not...create a significant visual intrusion.

IP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility. The following Design Criteria shall apply to projects site anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

IP Section 13.20.130(d)(2) Beach Viewsheds, Beaches. The scenic integrity of open beaches shall be maintained....

5.3.3 Visual Access Issues

The LCP requires the protection of the public vista from the beach and East Cliff Drive at this location through “minimizing disruption of landform and aesthetic character” (LUP Policy 5.10.3). The Coastal Act recognizes the public view at the site as a “resource of public importance” that must be protected from interference (Sections 30211 and 30251). The LCP likewise requires that the ocean vista at this site “be retained to the maximum extent possible” (LUP Policy 5.10.6) and that “the scenic integrity of open beaches shall be maintained” (IP Section 13.20.130(d)(2)). LCP and Coastal Act visual access policies as a whole speak to the need to minimize development in sight of the public viewshed.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 38

The existing rip-rap revetment (i.e., that rip-rap in place prior to the unauthorized placement of rock in February 1997), did not wrap fully around the bluff and was only minimally visible from the public vista along the East Cliff Drive. The proposed revetment extension, however, would extend around the bluff and further inland towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor, reframe the ocean vista at this location, and upset the general viewshed of the open beach at this location. Evidence of such impacts has been seen for over 3 years at the site. The revetment extension is also clearly visible within the public panorama across Corcoran Lagoon and the



beach area from Portola Drive just inland of the Lagoon. These negative viewshed impacts are inconsistent with the LCP and Coastal Act policies cited above.

These public viewshed impacts would be significant with the proposed revetment extension. Although the County condition to vegetate the upper portion of the revetment (County Condition V.B, see Exhibit A) attempts to soften this negative impact on the viewshed (as required by IP Section 13.20.130(b)(1)),



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 39

Commission experience in Santa Cruz County to date has shown that such measures have not proven entirely successful. The proposed revetment would constitute a “significant visual intrusion” contrary to LUP Policy 6.2.16, old IP Section IP 16.10.070(g)(5)(vi), and new IP Section 16.10.070(h)(3)(v). Programs like that in Carmel where revetments are covered with beach sand at the base and vegetated ‘caps’ at the top would not likely be successful by a single property owner. Such programs generally require a greater scope, and a public commitment, to be successful. Corcoran Lagoon at the base of the revetment would also be a concern.

Since the time of the County’s action on this project, the Applicants have submitted a mitigation proposal designed to alleviate visual concerns were the revetment extension to be allowed. According to the visual simulations provided, such mitigation would entirely camouflage all of the proposed rock with a native plant revegetation effort (see Exhibit H). Although such a revegetation plan would be doomed to failure in most revetment cases due to the ongoing wave attack (which would act to scour out the base soils generally resulting in the collapse of such vegetation), given the relatively benign nature of erosion at the proposed revetment extension location, it is likely that this type of revegetation could serve to successfully camouflage rocks here. However, it is precisely this benign erosion characteristic that shows the revetment extension to be unwarranted at this time (see earlier geologic findings). If a revetment were otherwise necessary to protect an existing structure significantly threatened, such a revegetation mitigation effort would be welcomed – particularly as a model for other similarly situated revetment projects.

In any case, there are complementary LCP and Coastal Act policies at play with this project: both geologic hazards policies and visual resource policies seek to minimize the amount of structural development and landform alteration along coastal bluffs and beaches. In this case, as described earlier, it has not been demonstrated that the proposed revetment extension is necessary to protect an existing structure that is in danger from erosion. In fact, as described above, it appears that a lesser project (or no project) is a feasible alternative. Such a reduced project would better “minimize disruption of landform and aesthetic character” as required by the LCP. The less rip-rap boulders in the viewshed the better from a visual access perspective, even if such a mass can be camouflaged.

In sum, the proposed project is inconsistent with the visual policies cited in this finding and is therefore denied. Denial of the project retains the existing scenic viewshed at this location “to the maximum extent possible” consistent with LCP and Coastal Act policies which protect this resource.

5.4 Wetland and Other Environmentally Sensitive Habitats

5.4.1 Applicable Coastal Act Policies

The Coastal Act is very protective of sensitive resource systems such as wetlands, riparian corridors and other environmentally sensitive habitat areas (ESHAs). The Coastal Act defines environmentally sensitive areas as follows:

Section 30107.5. "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 40

developments.

Almost all development within ESHAs is prohibited, and adjacent development must be sited and designed so as to maintain the productivity of such natural systems. In particular, Coastal Act Section 30240 states:

Section 30240(a). *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

Section 30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Article 4 of Chapter 3 of the Coastal Act also describes protective policies for the marine environment and specifically calls out wetland resources. Coastal Act Sections 30230 and 30231 provide:

Section 30230. *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, Coastal Act Section 30233(a), 30233(c) and 30233(d) specifically address wetlands protection. In particular, Coastal Act Section 30233 limits development in wetlands to a few limited categories where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects:

Section 30233(a). *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 41

commercial fishing facilities.

- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30233(c). *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division....*

Section 30233(d). *Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

Section 30236 specifically describes the limited uses for which stream alteration is allowed. Section 30236 states:



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 42

Section 30236. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

5.4.2 Parallel LCP Policies

The LCP too is very protective of riparian corridors, wetlands and other ESHAs. LCP wetland and wildlife protection policies include Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection). These LCP Sections are shown in Exhibit I. In general, these LCP policies define and protect ESHAs, allowing only a very limited amount of development at or near these areas.

5.4.3 Wetland and Other ESHA Issues

Although the County's portion of the project (the subject of related appeal number A-3-SCO-99-056) likewise involves development that affects ESHA, the majority of the potential wetland and ESHA area is within the Commission's retained coastal permitting jurisdiction.

Corcoran Lagoon/Rodeo Creek is a wetland system that may provide habitat for listed species.¹⁹ Under the Coastal Act, this system is considered ESHA. The County LCP likewise requires an area to be defined as ESHA if it includes a wetland or stream, or if listed species are present (LUP Policy 5.1.2, IP Section 16.32.040). In this case, the proposed project would place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. The project purports, in part, to protect against stream scour from these waterbodies. Per the LCP, this area is considered ESHA.

The LCP provides relevant guidance. The LCP requires a biotic assessment of ESHAs "as part of normal project review to determine whether a full biotic report should be prepared" (LUP Policy 5.1.9, IP Section 16.32.070). The project reviewed by the County did not include a biotic assessment nor a biotic report. As a result, it would have been difficult for the County to determine: (1) the extent of the ESHA, and to what degree portions may be in the County's coastal permit jurisdiction; (2) whether the subject proposed revetment would be allowed at this location in light of ESHA protective policies; and (3) potential impacts and/or appropriate mitigations.

However, in the time since the County took action on the proposal, and since the Commission took jurisdiction over the coastal permit that is the subject of the related appeal here, the Applicant has submitted a biotic review of the area in question.²⁰ This review includes a characterization of the area of

¹⁹ Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.

²⁰ By Biotic Resources Group with Dana Bland & Associates dated January 5, 2000, as supplemented by fisheries biologist Jerry Smith's letter dated December 3, 1999.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 43

the proposed revetment extension both prior to the installation of the subject extension and since. According to this report, Corcoran Lagoon/Rodeo Creek was not directly present in the proposed extension area prior to revetment installation. The open water of the lagoon was inland at this time; wetland fringe vegetation was present along the bluff/lagoon interface, but outside of the proposed revetment extension area. The revetment installation area itself was characterized by a mixture of native and non-native plants and shrubs. See Exhibit J.

As a result, it appears that the proposed after-the-fact revetment extension was not placed within any sensitive habitat areas. Since the subject revetment extension was installed, however, Corcoran Lagoon/Rodeo Creek has migrated into and out of this area several times, ultimately abutting the revetment extension at times. The Applicant's consulting fisheries biologist indicates that the presence of the rock in this area could provide for some refuge and feeding area for Coho salmon and steelhead (if present here) and Tidewater goby. In any case, as of the date of this staff report, Corcoran Lagoon/Rodeo Creek is *not* present adjacent to the subject revetment.

5.4.4 Wetland and Other ESHA Conclusion

The subject revetment extension is temporally located in an area considered ESHA by the LCP and the Coastal Act. However, the subject rocks were not installed when the Lagoon waters were present. As of the staff report date, the Lagoon is not adjacent to the revetment, but rather sandy recreational beach abuts the subject rock. Thus, there was no direct wetland fill due to the proposed revetment extension.

However, the proposed revetment extension is located in an area immediately adjacent to (and at times part of) a significant wetland system. According to the Applicant's biotic consultants, the subject rip-rap has no adverse effects on this ESHA.

The Coastal Act requires that the biological productivity of this system be maintained through, among other means, minimizing the alteration of natural streams (Section 30231), ensuring that significantly degrading habitat impacts are prevented (Section 30240(b)), and allowing stream alterations for a very limited few (none of which apply in this case) uses (Section 30236). One primary intent of such policies is to *avoid* any impacts to such natural ESHA systems. In this case, then, there are complementary Coastal Act policies at play here. Since the proposed revetment extension is not necessary to protect an existing threatened structure consistent with the Coastal Act, and since it would otherwise result in significant adverse coastal resource impacts as described in the above findings, it must be denied. Denial of the proposed project avoids any potential impacts to ESHA here. As a result, ESHA concerns with the proposed project no longer apply.²¹

5.5 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with

²¹ Except inasmuch as this denial ultimately requires removal of the revetment (since this is an after-the-fact application). This issue is discussed in more detail in the Enforcement finding.



Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 44

any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Santa Cruz County issued a draft Initial Study for the proposed revetment extension on January 28, 1998. Commission staff commented on the draft Initial Study on February 6, 1999 raising several issues with regards to establishing property ownership (of the beach parcel and the 23rd Avenue right-of-way), encroachment on recreational beach area, encroachment on Corcoran Lagoon wetland resources, visual issues, potential alternatives that appeared feasible (including the suggestion that the no project alternative appeared feasible in this case), and potential mitigations were the project to be otherwise shown necessary to protect an existing structure in danger from erosion (see Exhibit K).

Subsequently, Santa Cruz County issued a Negative Declaration for the proposed revetment extension project on March 12, 1998. Commission staff commented on the revised CEQA document and again raised many of the same issues with regards to: the ambiguity of the property ownership where the development was proposed; the lack of quantification of the area of beach recreational space lost to the footprint of the proposed structure; the lack of a demonstration that an existing structure was at risk and that shoreline armoring was even warranted in this case; the lack of any quantification of the sand supply impact; a discussion of potential mitigations should the project be proven warranted to protect an existing structure at risk; and information on the coastal permit jurisdiction for the site (see Exhibit K). The Commission's adopted substantial issue findings for related Appeal Number A-3-SCO-99-056 for this proposed project raised similar issues as well (see Exhibit B).

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. All of the issues previously forwarded to the County in early 1998 during the CEQA review period are the same issues that have been discussed in this appeal. Commission staff has been consistent from the beginning, and at each stage in the long process since the unpermitted structure was installed in February 1997, in asserting that approval of this project is not well supported by the facts of the case. There are crucial information gaps, a lack of critical analyses, and major LCP and Coastal Act policy inconsistencies. Most importantly, the geotechnical information available shows that there is not an existing structure in danger from erosion that would warrant the proposed shoreline protection and the range of negative coastal resource impacts associated with it.

As illustrated by the findings in this staff report, the Commission finds that the proposed revetment extension would result in significant adverse effects on the environment within the meaning of CEQA and that the "no project" alternative is the least environmentally damaging feasible alternative to the proposed project. Accordingly, the proposed project is not approvable under CEQA and is denied.

6. Enforcement

As described in this staff report, the revetment extension that is the subject of this appeal has been in place



California Coastal Commission

Application 3-97-027 Staff Report

Hooper/Filizetti Revetment

Page 45

since February of 1997. The proposal evaluated herein has been for CDP recognition of that portion of the proposed revetment extension extending towards the beach from the toe of the bluff (i.e., that portion located within the Commission's CDP jurisdiction). Although this application has been considered based upon the policies of Chapter 3 of the Coastal Act, consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

In any case, the Applicant has entered into an enforcement agreement with Santa Cruz County arising out of the unpermitted rock installation in the County's jurisdiction (see Exhibit L). This enforcement agreement specifies that, in the event of ultimate denial of the proposed revetment extension, the Applicant "agrees to remove unauthorized construction and restore project area to original condition within 30 days of appeal denial date." Based upon the Commission's denial of this project (i.e., denial of both the coastal permit that is the subject of appeal A-3-SCO-99-056 and the coastal permit that is the subject of application number 3-97-027) the site must be restored to pre-revetment condition by July 15, 2000 in order for the Applicants to be in compliance with the County enforcement agreement.

There are two concerns with this restoration:

First, since removal and restoration constitute "development" as defined by Coastal Act Section 30106 and LCP IP Section 13.10.700-D, the Applicants will have to file a CDP application to effect removal and restoration. More than likely, there would need to be two CDPs: one for work on the beach (in the Commission's CDP permitting jurisdiction) and an appealable CDP for that portion in the County's CDP jurisdiction above the toe of the bluff.

Second, the area where the revetment was installed is oftentimes occupied by Corcoran Lagoon/Rodeo Creek. As described in this staff report, this system is an ESHA within which listed species may be present at times. Accordingly, the greatest of care and timing is necessary on the part of the Applicant to ensure that this habitat is not unnecessarily threatened by revetment removal operations. CDFG will need to be consulted and CDFG authorizations may be required. In any event, these removal and restoration operations will need to be closely coordinated with Commission staff in the Central Coast District Office.

In any case, the subject revetment extension has been in place for over three years. The subject revetment extension's negative coastal resource impacts (i.e., on public access, on visual resources, on ESHA) have been felt by the public for those 3 years. As discussed in this staff report, these impacts are, and have been, substantial. Although, the Commission sees no need to prolong this issue any longer than absolutely necessary, it is questionable whether or not all the necessary regulatory reviews can occur in the 30 day time frame specified by the County enforcement agreement. Notwithstanding this issue, the Commission encourages restoration to commence at the site as soon as possible.



California Coastal Commission